

MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Court Docket No. KEN-14-313

STATE OF MAINE

v.

MARK MURPHY

ON APPEAL FROM THE KENNEBEC COUNTY SUPERIOR COURT
(Augusta)

BRIEF OF APPELLANT
Mark Murphy

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Statement of Facts

Mr. Murphy's mental illness has been a major influence throughout his life. By report, Mr. Murphy was a normal teenager. He played football "and was generally social and well liked." (A. at 40.) Unfortunately, on February 19, 1981 Mr. Murphy was in a car accident in which he received a closed head injury. (A. at 40.) Following the accident, Mr. Murphy's performance in school began to decline. (A. t 40.) He became more introverted, began missing classes, and his participation in sports was affected. (A. at 40.) He went from a "B" student to a "C" and "D" student, and barely graduated high school. (A. at 40.) In the early 1990's he was placed on disability following the loss of his job due to depression. (A. at 40.) Mr. Murphy was first hospitalized for his psychiatric conditions at a facility in New Hampshire in 1987. (A. at 40.) He was then hospitalized several times at the Augusta Mental Health Institute ("AMHI") in the late 1980s and early 1990s. (A. at 40.) He also suffered from substance use and was incarcerated intermittently through the 1990's. (A. at 41.)

Mr. Murphy first came to Riverview Psychiatric Center ("RPC") in 2006 following a judicial finding that he was not criminally responsible for an incident in which he broke into a neighbor's house during the 2004 elections in an effort to influence the person's vote. (Tr. at 166, 208.) Although Mr. Murphy's diagnosis evolved over his time at RPC, as of March 15, 2013, his mental health diagnosis included Mental Disorders Secondary to Medical Conditions (i.e. psychotic symptoms resulting from his brain injury related to the car accident), Posttraumatic Stress Disorder, and Schizoaffective Disorder-

Bipolar type. (Tr. at 45, A. at 77.) Despite being at RPC for seven years, Mr. Murphy's mental health never improved to the point where he was allowed to live outside of RPC. According to his psychiatrist Dr. Carolyn Criss, Mr. Murphy struggled with psychosis and delusions on a regular basis during his time as a patient. (Tr. at 180.)

In early March 2013, Mr. Murphy was continuing to struggle to maintain his mental health. Before leaving on vacation at the end of February 2013, Dr. Criss left a cautionary note for staff indicating that Mr. Murphy tends to decompensate when she is away. (A. at 75.) During the week prior to March 16, 2014, Mr. Murphy's delusional thinking escalated dramatically. (Tr. at 46.) He became more paranoid, believing that someone was tainting his food and he was hyper vigilant. (Tr. at 42.) It was suggested Mr. Murphy's downward spiral was influenced in part to his psychiatrist being absent. (Tr. at 49.) Disruptions in a patient's treatment team is recognized as often having an adverse effect on patients, including Mr. Murphy. (Tr. at 49.)

Due to the escalation of Mr. Murphy's behaviors, a decision was made by his treatment team to postpone his visit to his parent's house, which was to occur on March 16th, due to behaviors "consistent with worsening paranoia." (Tr. at 13, 42.) On March 15, 2013, the team met with Mr. Murphy to inform him that the trip was being postponed. (Tr. at 13-15.) Mr. Murphy was upset and disappointed with the news, as he looked forward to visits with his parents. (Tr. at 43.) He took particular issue with Mr. Robert Lamoreau, the program services director, who was scheduled to supervise the trip. (Tr. at 13,

43.) Mr. Murphy believed that Mr. Lamoreau canceled the trip simply because Mr. Lamoreau did not want to be bothered with supervising him. (Tr. at 85.)

The next day, staff continued to observe signs that Mr. Murphy was struggling with his mental health. He was observed to have a blunt affect and be pacing back and forth, a sign that he is struggling with his mental state. (Tr. at 78.) At one some point he approached Margaret Todd-Brown, a nurse at RPC, and asked her how me might go about obtaining his medical records. (Tr. at 62.) Mr. Murphy then asked her if he could go to the computer lab and Skype with his parents and go for a walk. (Tr. at 64.) He was told that he could not go for a walk and Skype due to the concerns noted by the treatment team regarding his paranoia and behavioral decline. (Tr. at 64.) Mr. Murphy then terminated the conversation and went back to his room. Tr. at 64.)

A short while later, Jamie Hill-Spotswood was doing 15 minute checks, which are required "for clients who have a safety concern if they are observed doing poorly, if it's believed they're decompensating..." (Tr. at 92.) During the check she saw Mr. Murphy come out of his room and walk towards her. (Tr. 93.) He looked at her and then turned into the bathroom. (Tr. 94.) Ms. Hill-Spotswood then went to check the other bathroom. (Tr. at 96.) As she was standing in front of the other bathroom, she felt someone breathing behind her. (Tr. at 96.) She turned around and Mr. Murphy was standing there. (Tr. at 96.) He said "I'm sorry, Jamie," and began to hit her about the head. (Tr. at 96.) Jamie yelled for help, and Mr. Murphy was subdued by another member of the RPC staff. (Tr. at 97.) Ms. Spotswood was taken to the hospital where she was

treated. She had an abrasion on her forehead and under her left eye, and on the back of her left hand. (Tr. at 56.) An x-ray determined that there was a metal object in her right hand. (Tr. at 56.) An orthopedic surgeon was called in to remove the object, which turned out to be the head of a pen. (Tr. at 57-58.)

Following the assault, Mr. Murphy was placed in locked seclusion and given a cocktail of medication to sedate him. (Tr. at 77-78.) He was not given a psychiatric assessment, rather the staff interacted with him to make sure he was still breathing due to the heavy dose of medication. (Tr. at 79-80.) Over the next few days there were several meetings with Mr. Murphy where he exhibited elevated behaviors. He demonstrated a lack of insight into his paranoia and behaviors from the prior weeks. (Tr. at 82.) At one point, he urinated in the corner of the seclusion room. (Tr. at 79.) His eyes were dilated and he was refusing food. (Tr. at 81.) On March 18, 2013 Dr. Criss, who had returned from vacation, met with Mr. Murphy in the seclusion room. (Tr. at 82.) Mr. Murphy was still exhibiting paranoid thoughts, including that someone had tampered with his food. (Tr. 82.) He also refused to believe that the trip had been canceled due to safety concerns, rather he continue to have the paranoid belief that his trip to visit his parents was canceled because Mr. Lamoreau simply did not want to make the trip to his parent's house. (Tr. at 82.) Dr. Criss was not able to "re-orient him to reality...he remained fixed to the paranoid ideas about staff." (A. at 88.) The treatment plan developed at that time for Mr. Murphy was "to maintain safety and continue to work with

Mr. Murphy on reality based perceptions...” (A. at 88.) Mr. Murphy stated that he did not remember the assault, but that “he would never leave RPC and this was his “domain.” (A. at 88.)

On March 21, 2013, a criminal complaint was filed charging Mr. Murphy with the assault. (A. at 2.) An indictment was filed with the court on April 19, 2013, charging him with three crimes. (A. at 2.) Count one charged him with Elevated Aggravated Assault (class A), alleging that on March 16, 2013 he intentionally or knowingly caused serious bodily injury to Ms. Hill-Spotswood with the use of a dangerous weapon, a pen. (A. at 35.) Count two charged Mr. Murphy with Elevated Aggravated Assault (class A), alleging that on March 16, 2013, he engaged in conduct that manifested a depraved indifference to the value of human life and that in fact caused serious bodily injury to Ms. Hill-Spotswood with the use of a dangerous weapon, a pen. (A. at 35.) Count three charged Mr. Murphy with Aggravated Assault (class B) alleging that on March 16, 2013 he intentionally, knowingly or recklessly caused serious bodily injury to Ms. Hill-Spotswood. Mr. Murphy was appointed an attorney on May 8, 2013. (A. at 2.) A plea of not criminally responsible was entered on August 8, 2013. (A. at 3.) A bench trial was held on October 1, 2013. (A. at 4.)

The first witness to be called was Robert Lamoreau, the program director at RPC. He testified that on March 15, 2013 the treatment team made a decision to cancel Mr. Murphy’s trip to his parents due to concerns with his recent behaviors. (Tr. at 15.) Mr. Murphy was upset, and at one point gave Mr. Lamoreau “the finger.” (Tr. at 15.) Notably, Jamie Hill-Spotswood was not

part of that meeting, nor was she a member of the treatment team. (Tr. at 14-15.)

The next witness to be called was Zachary Smith, a physician's assistant at RPC. (Tr. at 41.) Mr. Smith testified that he has assumed Dr. Criss' duties as a psychiatrist while she was on vacation during the first two weeks of March 2013. (Tr. at 41.) He testified that Mr. Murphy's behavior became more and more paranoid several weeks prior to the assault, which led to the decision to cancel his visit. (Tr. at 42.) He also explained that there had been incidents recently that reflected unstable behaviors. For example, in the week leading up to the assault, Mr. Murphy went on several outings "where his behavior was very appropriate." (Tr. at 48.) But Mr. Smith also recalled that Mr. Murphy had screaming fits at his providers because he believed that his food had been poisoned. (Tr. at 49.) Mr. Smith agreed that extreme changes in Mr. Murphy's behaviors were consistent with his mental health diagnosis. (Tr. at 49.) In addition, his behaviors were not always based in reality. (Tr. at 50.) Mr. Smith testified that much of the work with Mr. Murphy over the years had focused on helping him distinguish between reality and delusions. (Tr. at 51.) He also confirmed that Mr. Murphy was angry with the decision to suspend the visit with his parents, although he was not as angry as staff had predicted. (Tr. at 43.)

Margaret Todd-Brown testified about her interactions with Mr. Murphy in her capacity as a nurse at RPC. She testified that towards the end of the winter Mr. Murphy had begun to mentally decompensate, as evidenced by his

increase in paranoia and behavioral outbursts. (Tr. at 76.) She indicated that he had a blunt affect and that she noticed that he appeared to be "having a difficult time" and "was not doing well" on March 16, 2014. (Tr. at 78.)

Jamie Hill-Spotswood testified about the events that occurred during the assault, her injuries, and her relationship with Mr. Murphy. She indicated that prior to the assault she had a good relationship with Mark. (Tr. at 90.) She had taken him on trips before, sometimes alone, and did not feel that there were any issues between the two of them. (Tr. at 90.) By her account, they had "a normal, professional relationship..." (Tr. at 105.) She could not think of any reason why he would have been angry with her, and she was not part of the team that made the decision to suspend the visit to his parents. (Tr. at 105.) She testified that just prior to the assault, Mr. Murphy approached her, said that he was sorry, and began hitting her. (Tr. at 99.) He said nothing else during the assault. (Tr. at 99.) Following the assault a pen tip was removed from her hand. (Tr. at 102.) Following some occupational therapy, she was re-referred to a hand specialist because the injury was not getting any better. (Tr. at 102.) Following an ultrasound, another surgery was performed and a second object was removed from her hand. (Tr. at 102.) Ms. Hill-Spotswood testified that as of the time of trial, she still participated in occupational therapy as needed. (Tr. at 104.) Her testimony regarding the use of her hand indicated that she could not "lift a gallon of milk like I used to or carry something heavy." (Tr. at 104.)

Madeline Orange, who was another nurse at RPC testified about her interactions with Mr. Murphy after the assault. She testified that she accompanied Dr. Criss into the meeting with Mr. Murphy shortly after the assault. (Tr. at 127.) She stated that Mr. Murphy did not discuss the incident, but then testified that he said he did not remember it. (Tr. at 127.) He also discussed being upset that the trip to his parents was canceled and blamed Mr. Lamoreau. (Tr. at 128)

Testimony was taken from Dr. Carolyn Criss, Mr. Murphy's psychiatrist during the seven years that he was a patient at RPC. (Tr. at 151-53.) She met with Mr. Murphy for a five minute assessment several days after the assault on Ms. Hill-Spotswood. (Tr. at 158.) She explained that even though her note did not indicate that he appeared psychotic at that time, "[k]nowing Mr. Murphy over the years, he was able to look fairly normal and be pretty grossly psychotic in the background." (Tr. at 158.) She testified that Mr. Murphy experienced psychosis and delusions on a regular basis during his entire time at RPC, and struggles with it on an ongoing basis. (Tr. at 179, 180.) She indicated that Mr. Murphy was having delusions about another patient coming into his room at 4:00 a.m. before she left on vacation at the end of February. (Tr. at 180.) She also testified that Mr. Murphy had engaged in assaultive behavior in the past that was related to paranoid thinking. (Tr. at 169.)

Two experts testified as to the issues of abnormal condition of mind and criminal responsibility. The defense called Dr. Carlyle Voss, a forensic psychiatrist. (Tr. at 222.) Dr. Voss testified that he interviewed Mr. Murphy as

part of the forensic evaluation. Mr. Murphy explained that at the time of the assault he wanted to marry Ms. Hill-Spotswood, however did not believe this was possible because she was already married. (Tr. at 225.) Mr. Murphy reasoned that the matrimonial bond would dissolve if she died and then came back to life, because the marriage vows stated "until death do us part." (Tr. at 226.)

Dr. Voss concluded that Mr. Murphy's "ability to appreciate the wrongfulness of what he was doing was seriously impaired...because of his psychotic thinking." (Tr. at 224.) Dr. Voss identified examples of Mr. Murphy's recent psychotic thinking and delusional beliefs in proximity to the assault, including people tainting his food. (Tr. at 226.) He also highlighted the fact that it was agreed that Mr. Murphy was decompensating to the point where staff restricted his activities. (Tr. at 226.) Dr. Voss did agree that the cancelation of Mr. Murphy's pass likely increased his "stress level," but explained that "his processing of his frustration was fairly distorted by his mental illness." (Tr. at 227.) Dr. Voss could not explain why Mr. Murphy would have targeted Ms. Hill-Spotswood out of anger, especially since the records did not indicate he expressed frustration towards her. (Tr. at 228.) During cross-examination Dr. Voss indicated that his opinion as to criminal responsibility did not rest entirely on the assumption that Mr. Murphy's explanation of his thinking in regards to the assault was true. (Tr. at 237-38.) He also took into account the totality of Mr. Murphy's mental health history. (Tr. at 238.)

Dr. Andrew Wisch was the last witness called by the State. Dr. Wisch testified that Mr. Murphy had stated during the interview that he assaulted Ms. Hill-Spotswood because at the time he wanted to marry her, but that because she was married to someone else he had to kill her in order to sever the marriage vows. (Tr. at 195.) Right before the assault Mr. Murphy was having mixed feelings about acting upon this desire. (Tr. at 196.) However, right before the assault Mr. Murphy went into the bathroom where he saw feces and toilet paper, and took that as a sign he needed to follow through with his plan because it was an “unfinished job.” (Tr. at 196.) Mr. Murphy also explained that the statement he made to Ms. Hill-Spotswood just before the assault that he was “sorry” was an apology because he was taking her away from her husband. (Tr. at 197.) Mr. Murphy also denied a memory of the actual attack. (Tr. at 196.)

Ultimately, Dr. Wisch opined that at the time of the assault, Mr. Murphy’s “misperception of reality was not extraordinarily distorted.” (Tr. at 194.) His reasoning was that he did not feel that the records reflected that Mr. Murphy had an obsession with Ms. Spotswood, which might corroborate the motivation for his actions. (Tr. at 199.) Dr. Wisch also noted that given how upset Mr. Murphy was that his trip was canceled, ultimately concluding that Mr. Murphy was acting out of anger, rather than a delusion. (Tr. at 199.) Interestingly, Dr. Wisch also testified that Mr. Murphy was often not able to recall in “accurate detail” the factual events surrounding prior assaults. (Tr. at 200.) Dr. Wisch did agree that Mr. Murphy experienced “low grade” psychotic

symptoms most of the time, as well as paranoia and grandiosity. (Tr. at 194.) He also recognized that Mr. Murphy was struggling with his mental health and was exhibiting signs of being paranoid, hyper-vigilant, and “manicky” near the time of the assault. (Tr. at 203.) However, Dr. Wisch struggled to explain the ultimate issue of why Mr. Murphy would have assaulted Ms. Hill-Spotswood, given that he had a “positive relationship with her,” and she was not part of the decision to take away his visits. (Tr. at 217-18.)

During the trial Mr. Murphy did not testify and no inquiry was made as to whether he intended to testify. Mr. Murphy’s counsel made no representation to the court as to whether Mr. Murphy was waiving his right to testify.

The Court found Mr. Murphy guilty of all three counts in the indictment. In summary, the Court did not find Mr. Murphy’s explanation to the psychiatrist and psychologist in regards to his motive for assaulting Ms. Hill-Spotswood credible, namely that he intended to marry her. (A. at 16.) The Court reasoned that the determination of whether Mr. Murphy was not criminally responsible hinged on his motive for assaulting Ms. Hill-Spotswood. (A. at 16.) Curiously, at sentencing the trial Court noted that the sentencing was “a difficult thing when the Court is not satisfied that some of Mr. Murphy’s actions are not of his own free will, even though the Court has found that he should be held responsible for the actions for which he stands convicted...” (A. at 28.)

No post-verdict motions were filed on behalf of Mr. Murphy, and his counsel soon after withdrew. (A. at 4.) Sentencing occurred on June 23, 2014. Mr. Murphy was sentenced on count one to 15 years, all but 10 suspended, and 2 years of probation. On count two he was sentenced to 5 years, all suspended, with 2 years of probation. On count three he was sentenced to 2 years, all suspended, and 2 years of probation. (A. at 31.)

Mr. Murphy filed a timely appeal.

Issue Presented for Review

- I. **Did Mr. Murphy knowingly and voluntarily waive his right to testify at his trial where the court made no inquiry into his intention directly, or through counsel?**
- II. **Was Mr. Murphy subject to double jeopardy where he was convicted and sentenced on three assault charges all of which were based upon the same criminal act?**
- III. **Was it unreasonable for the trial court to find the defendant criminally responsible where there was substantial evidence presented at trial that the defendant suffered from delusions and paranoia before, during, and after the assault?**
- IV. **Was sufficient evidence presented at trial to support a finding that the State had proven beyond a reasonable doubt that Mr. Murphy's actions caused serious bodily injury to Ms. Hill-Spotswood?**

Summary of the Argument

Mr. Murphy's constitutional right to testify in his own defense was infringed upon where he did not knowingly and voluntarily waive that right, either through counsel or otherwise. This error warrants a remand to the trial court for a new trial.

Mr. Murphy was also subject to double jeopardy where he was convicted and sentenced for three separate criminal offenses, all of which were based on the same conduct. Accordingly, the remedy for this issue standing alone is for the matter to be remanded to the trial court for resentencing.

It was unreasonable for the trial court to reject Mr. Murphy's affirmative defense that he was not criminally responsible for the assault. Accordingly, the convictions should be vacated and a verdict of not guilty by reasons of insanity should be entered on the record.

Lastly, insufficient evidence was presented to the trial court to support a finding that Mr. Murphy's actions caused serious bodily injury to the victim. Accordingly, Mr. Murphy's convictions should be vacated and the matter remanded for sentencing on the lesser included offenses.

Standard of Review

The court will undergo a two part review of the record to determine whether a defendant has knowingly and voluntarily waived their right to testify in their own defense. *State v. Ericson*, 2011 ME 29, ¶ 15, 13 A.3d 777. The factual findings by the trial court are reviewed for clear error, while the ultimate issue of waiver is reviewed *de novo*. *Id.*

Where the Defendant alleges that their conviction subjects them to Double Jeopardy, this Court will review the judgment *de novo* because the

issue involves the interpretation of constitutional provisions. *State v. Labbe*, 2009 ME 94, ¶ 2, 979 A.2d 693.

“[W]hen reviewing the sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the State to determine whether the jury could rationally find beyond a reasonable doubt every element of the offense charged.” *State v. Treadway*, 2014 ME 124, __ A.3d __. This Court reviews questions of law *de novo*. *Roberts v. State*, 2014 ME 125, ¶ 21, __ A.3d__.

This Court will overturn a trial court’s judgment in regard to criminal responsibility where the defendant makes “a strong showing that no fact finder could reasonably conclude otherwise that that the defendant lacked criminal responsibility for his conduct.” *State v. Gurney*, 2012 ME ¶ 46, 36 A.3d 893 (citing *State v. Abbott*, 622 A.2d 723, 726 (Me. 1993)).

Argument

I. Mr. Murphy did not knowingly and voluntarily waive his right to testify at his trial where the court made no inquiry into his intention directly or through counsel

Mr. Murphy did not knowingly and voluntarily waive his right to testify at his trial. The Court did not engage in a colloquy with Mr. Murphy regarding this issue, nor did Mr. Murphy’s counsel make any representations to the court in this regard. It is well settled law that a defendant has a constitutional right to testify in their own defense. This right is embedded within multiple

provisions of our Bill of Rights. In *Rock v. Arkansas*, the United States Supreme Court noted that the right to offer testimony on one's defense was protected by the Fourteenth Amendment as "essential to due process of law in a fair adversary process." 483 U.S. 44, 51, (1987). The Compulsory Process Clause of the Sixth Amendment allows the accused to call witnesses on their own behalf, including themselves. *Id.*, at 52. "It is the accused, not counsel, who must be accorded...compulsory process for obtaining witnesses." *Id.* The Fifth Amendment also guarantees that "[e]very criminal defendant is privileged to testify in his own defense, or to refuse to do so." *Id.*, citing *Harris v. New York*, 401 U.S. 222, 230 (1971).

The right to testify may be relinquished only after a knowing and voluntary waiver. *State v. Ericson*, 2011 ME 29, ¶ 15, 13 A.3d 777. This Court will apply a bifurcated review when determining if a defendant has knowingly and voluntarily waived their right to testify. *Id.* "The factual findings made by the trial court are reviewed for clear error, while the ultimate issue of waiver is reviewed *de novo*." *Id.* (internal citations omitted). The court will examine the totality of the circumstances to determine whether a defendant has knowingly or voluntarily waived their right to testify. *Id.* at ¶ 16.

The Court has inferred a waiver based on a defendant's affirmative conduct in several cases. *See Id.* at ¶ 17 (defendant refuses to limit testimony upon direction of the court); *State v. Murphy*, 2010 ME 140, 10 A.3d 697 (defendant absconds during trial). In addition, the trial court may rely upon the representation made by a Defendant's attorney that they do not intend to

testify. *State v. Ford*, 2013 ME 96, 82 A.3d 75. However, there must be some indication in the record that a defendant has waived the right to testify in their own defense, other than the fact that they do not, in fact, testify.

In this case, the record is completely devoid of any inquiry in regards to Mr. Murphy's intention to testify or not to testify. The Court did not engage in a direct colloquy with Mr. Murphy, which this Court has indicated is the best practice. *Id.* at ¶ 22. Moreover, defense Counsel made absolutely no representation to the Court indicating an intention that Mr. Murphy wished to waive his right to testify in his defense.

In this case, it was especially critical for the trial Court to inquire as to Mr. Murphy's intention to testify. As amply demonstrated by the evidence, Mr. Murphy is a very mentally ill individual. He suffers from delusions and paranoia, and experiences psychotic symptoms "most of the time." (Tr. at 194.) Testimony from Mr. Murphy's longtime psychiatrist indicated that he can appear outwardly normal, yet be "pretty grossly psychotic in the background." (Tr. at 158.) Given that Mr. Murphy generally functions with impaired mental faculties on a day-to-day basis, it was critical for the court to use the utmost caution in securing a knowing and voluntary waiver of the right to testify. In this case, there was no inquiry.

Additionally, the importance of securing a knowing and voluntary waiver was heightened by the fact that Mr. Murphy's affirmative defense that he lacked criminal responsibility for the assault *placed a burden of proof on him*. 17-A M.R.S.A. § 39(3). Mr. Murphy's subjective belief at the time of the assault

was the entire crux of his defense in regards to both criminal responsibility and abnormal condition of mind.

Given that the two experts differed in their opinion in regards to those defenses, it was prudent for the Court to inquire as to whether Mr. Murphy wished to take the stand in his own defense. Not surprisingly, the Court's disbelief as to Mr. Murphy's state of mind at the time of the assault appears to have been a significant factor in the trial court's rejection of his defense. *See A.* at 16 (In these circumstances the court does not find the Defendant's explanation [to the psychiatrist] credible but simply an attempt to create some psychotic explanation for a fit of anger.")

Mr. Murphy did not knowingly and voluntarily waive his right to testify in his own defense. Accordingly, his conviction should be vacated and the case remanded for a new trial.

II. Mr. Murphy was subject to Double Jeopardy where he was convicted and sentenced on three assault charges, all of which were based upon the same criminal act

Mr. Murphy's convictions for three counts of assault subjected him to Double Jeopardy, because all three of the convictions stem from the same act. The Fifth Amendment to the United States Constitution "protects against multiple punishments for the same offense." *State v. Bellavance*, 2013 ME 42, ¶ 20, 65 A.3d 1235, citing *State v. Labbe*, 2009 ME 94, ¶¶ 3-4, 979A.2d 693. In *Bellavance* the defendant was charged and convicted of two counts of arson for setting fire to a coffee shop. At sentencing, the court consolidated the two counts of arson into one count, for which he was sentenced. *Bellavance*, 2013

ME at ¶ 20, 65 A.3d 1235. On appeal, Bellavance argued that the indictment and conviction violated his right to be free of Double Jeopardy. *Id.* The Law Court agreed that multiple convictions stemming from the same criminal act would constitute Double Jeopardy. *Id.* at 21. However, the Court indicated that the violation had been cured, stating “[w]hen, instead of charging two alternative theories within one count, the State presents the two alternative theories charged as two counts, based on one criminal act, court action to consolidate the duplicative counts is appropriate to ensure that a person cannot be convicted or punished more than once for the same criminal act.” *Bellavance*, ¶ 20, 65 A.3d 1235. The Law Court indicated that any Double Jeopardy violation had been cured because the charges had been consolidated and Bellavance was sentenced for only one count. *Id.* at ¶20.

Similarly, in *State v. Robinson*, the Defendant was charged and convicted under two alternative theories of Gross Sexual Assault, even though only one criminal act had been committed. 1999 ME 86, ¶ 12, 730 A.2d 684. He received identical sentences for the two counts for which he was convicted, namely 17 years, with all but 12 years suspended. *Id.* at 11. The Law Court took notice of the error on appeal and vacated one of the convictions by consolidating the charges. *Id.* at 15. However, the Law Court did not remand the case for resentencing, stating that “[t]he matter need not be remanded for sentencing as it is clear from the sentencing transcript that that court contemplated it was sentencing for only a single act.” *Id.* at ¶ 15.

In this case, the record clearly indicates that Mr. Murphy committed only one criminal act. The multiple counts in the indictment reflect alternative theories of the offense. In fact, at sentencing the Court indicated on the record that all three convictions arose “out of a single incident.” (A. at 19.) Yet, he was convicted and sentenced to three different periods of imprisonment on each count. Therefore, Mr. Murphy’s right to be free from Double Jeopardy pursuant to the Fifth Amendment of the Constitution of the United States and article I, section of the Maine Constitution was infringed upon.

However, unlike in *Robinson*, a resentencing is necessary in this case, because it is not clear that the Court “contemplated it was sentencing for only a single act.” *Id.* at 15. In *Robinson*, the Defendant received the exact same sentence for both counts for which he was convicted. 1999 ME at ¶ 11, 730 A.2d 684. In this case, Mr. Murphy received significantly different sentences for each of the class A offenses for which he was convicted.

Count one charged Mr. Murphy with Elevated Aggravated Assault (class A), alleging that on March 16, 2013 he intentionally or knowingly caused serious bodily injury to Ms. Hill-Spotswood with the use of a dangerous weapon, a pen. (A. at 35.) On this count Mr. Murphy was sentenced to 15 years in prison, with all but 10 years suspended and two years of probation. (A. at 31.) Count two charged Mr. Murphy with Elevated Aggravated Assault (class A), alleging that on March 16, 2013, he engaged in conduct that manifested a depraved indifference to the value of human life and that in fact caused serious bodily injury to Ms. Hill-Spotswood with the use of a dangerous

weapon, a pen. (A. at 35.) On this count he was sentenced to 5 years all suspended with two years of probation, concurrent to count one. (A. at 31). Count three charged Mr. Murphy with Aggravated Assault (class B) alleging that on March 16, 2013 he intentionally, knowingly or recklessly caused serious bodily injury to Ms. Hill-Spotswood. On this count, the Court sentenced Mr. Murphy to two years, all suspended, with two years of probation, concurrent to counts 1 and 2.

The disparate sentences that were imposed by the Court suggests that, while the Court recognized that all of the convictions “arose of a single incident,” the Court believed that Mr. Murphy was in fact guilty of committing three separate offenses for which he could be lawfully sentenced. Because Mr. Murphy received three separate sentences, a resentencing is necessary to ensure that he suffered no prejudice at sentencing by having been deemed by the Court to have committed multiple offenses.

III. It was unreasonable for the trial court to find the defendant criminally responsible where there was substantial evidence presented at trial that the defendant suffered from delusions and paranoia before, during, and after the assault

Even if the court rejected the idea the Mr. Murphy had a delusion about marrying Ms. Hill-Spotswood, the court erred by finding that he was criminally responsible for the assault. This Court will overturn a trial court’s judgment in regard to criminal responsibility where the defendant makes “a strong showing that no fact finder could reasonably conclude otherwise that that the defendant

lacked criminal responsibility for his conduct.” *State v. Gurney*, 2012 ME ¶ 46, 36 A.3d 893 (citing *State v. Abbott*, 622 A.2d 723, 726 (Me. 1993)).

The evidence overwhelmingly demonstrated that Mr. Murphy suffered from extreme mental illness. There was ample evidence that Mr. Murphy’s mental health was rapidly deteriorating in early March of 2013, following his psychiatrist’s absence on vacation. He became increasingly paranoid and delusional leading up to the assault, to the extent that staff began to limit his privileges due to safety concerns. (Tr. at 42.) Given that Mr. Murphy could be “grossly psychotic” even while maintaining a normal outward appearance, it is highly telling that he was so mentally ill that staff was able recognize he was deteriorating. (Tr. at 158.)

The Court seemed to base its verdict entirely upon the credibility it assigned to Mr. Murphy’s explanation of why he attacked Ms. Hill-Spotswood. While certainly relevant to this inquiry, it does not follow that this issue is dispositive as to whether his ability to appreciate the wrongfulness of his actions. As explained by Dr. Wisch, a person may know that what they are doing is “wrong” in a concrete sense of the word. (Tr. at 215.) However, a person may have “delusional reasons for [their actions] that override that knowledge of it being wrong; so there’s not a broader appreciation...[that their actions are] the wrong thing to do. (Tr. at 215.)

Mr. Murphy’s behaviors and on March 16th were extremely bizarre and distorted. He assaulted Ms. Hill-Spotswood, even though he had no reason to

be angry with her. Dr. Wisch agreed that this inconsistency was "one of the hardest parts...to explain adequately. (Tr. at 217.) His statement of apology cannot be reconciled with the idea that he acted out of anger due to his trip being canceled. Additionally, his belief that the trip was canceled due to some type of grudge or conspiracy by Mr. Lamoreau was a delusional belief that was a result of his mental illness. Even two days later, Mr. Murphy was still suffering from the paranoid delusion that his trip had been canceled by staff because Mr. Lamoreau simply did not want to take him to his parent's house. (Tr. at 82.) Dr. Criss noted that she was not able to "re-orient him to reality...he remained fixed to the paranoid ideas about staff." (A. at 88.)

A person's actions may be caused by anger, yet they still do not possess the ability, due to a mental disease or defect, to appreciate the wrongfulness of their actions. As stated by Dr. Wisch, one's delusional beliefs may override their knowledge that their actions are wrong. In other words, if Mr. Murphy did act out of anger, but it was based on a paranoid delusion that staff were conspiring against him, his behaviors still are a result of his mental illness. At sentencing, even the trial court conceded that "some of Mr. Murphy's actions are not of his own free will..." (A. at 28.)

Despite the Court's finding, viewing the evidence in its totality, no reasonable fact finder could conclude that Mr. Murphy had not proven by a preponderance of evidence that he was not criminally responsible. Before, during, and after the assault he was delusional and psychotic. The only reasonable interpretation of Mr. Murphy's mental illness at the time of the

assault was that it “grossly and demonstrably” impaired his “perception and understanding of reality.” 17-A M.R.S.A. §39(2). Whether the fact finder were to believe that Mr. Murphy intended to kill Ms. Hill-Spotswood so that he could marry her, or that he acted out of anger due to his paranoid delusions, he lacked the *substantial capacity* to appreciate the wrongfulness of the criminal conduct.” 17-A M.R.S.A. § 39(1). As such, the finding of guilt as to all counts in the indictment should be vacated and a verdict of not guilty by reason of insanity should be entered.

IV. Sufficient evidence was not presented at trial to support a finding that the State had proven beyond a reasonable doubt that Mr. Murphy’s actions caused serious bodily injury to Ms. Hill-Spotswood?

There was insufficient evidence that Mr. Murphy’s conduct caused serious bodily injury to Ms. Hill-Spotswood where very little testimony was introduced regarding her injuries in the context of the statutory definition of “serious bodily injury.”

[W]hen reviewing the sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the State to determine whether the jury could rationally find beyond a reasonable doubt every element of the offense charged. *State v. Treadway*, 2014 ME 124, __ A.3d __. Serious bodily injury “means a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended

convalescence necessary for recovery of physical health.” 17-A M.R.S.A. § 2(23).

The only testimony regarding the extent of Ms. Hill-Spotswood’s injuries came from Dr. Harry Grimmnitz and herself. Dr. Grimmnitz testified generally about Ms. Hill-Spotswood having a surgery to remove the tip of a pen from her hand. Ms. Hill-Spotswood testified that there was a second surgery. The testimony was insufficient to determine whether those procedures constituted *extended* convalescence.

In addition to the surgery, Ms. Hill-Spotswood testified as to three specific facts regarding the injury to her hand. First, she testified that she could not “lift a gallon of milk like [she] used to.” (Tr. at 104) Second, she testified that she could not “carry something heavy.” (Tr. at 104.) Lastly, she stated that 7 months later she still has occupational therapy appointments “as needed.” (Tr. at 104.) Apart from stating that she had one of these appointments the week before the trial, no other evidence was presented about the frequency, duration, or nature of any continuing therapy.

The evidence presented by the State is insufficient to prove beyond a reasonable doubt that Mr. Murphy’s actions caused “serious bodily injury” to Ms. Hill-Spotswood. Her testimony that she could not “lift a gallon of milk like [she] used to” and “cannot carry something heavy” did not present the fact finder with sufficient reliable evidence to prove serious bodily injury. Lastly, there was no evidence presented about the frequency, duration, or nature of the occupational therapy that she received. It may have been once a month,

once every six months, or once a week. There was no testimony from any expert, including her occupational therapist, to answer what are technical questions related to her medical condition.

The evidence presented by the State was insufficient to prove beyond a reasonable doubt that Mr. Murphy caused serious bodily injury to Ms. Hill-Spotswood. As such, the convictions should be vacated and the matter should be remanded to the trial court for sentencing in regard to any lesser included offenses.

Conclusion

The Defense is requesting that this Honorable Court reverse and remand this matter for a new trial based on a number of substantial errors. There is no question in this case that Mr. Murphy suffers from severe mental illness. As a result of his mental illness, he had been committed to RPC for seven years at the time of this assault. He continued to remain very mentally ill. The delusions and paranoia from which he suffered affects him every day of his life. This fact is central to two of the issues in this case, namely the lack of waiver of Mr. Murphy's right to testify and the trial Court's finding that he was criminal responsible.

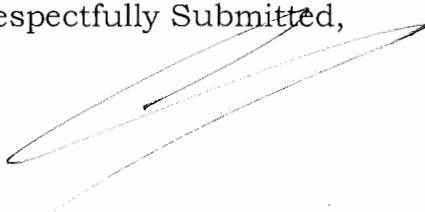
Due to Mr. Murphy's mental illness, it was imperative for the trial court to make an inquiry of Mr. Murphy as to his intention to testify. This is especially true where he carried a burden of proof. This Court should draw a bright line requiring the trial court to make an inquiry of any defendant regarding their right to testify when the defendant bears the burden of proof.

In addition, Mr. Murphy's history of mental illness, including undisputed testimony regarding his mental state at the time of the assault, compelled a finding that he was not criminally responsible.

Mr. Murphy was also subject to double jeopardy where he was convicted and sentenced for three separate offenses arising from the same conduct. Given the fact that the trial Court imposed different sentences in regard to all three charges implies that the sentencing judge believed him to be guilty of three offenses. Therefore, if the court rejects Mr. Murphy's other arguments, the matter should be remanded for resentencing on just one count.

Lastly, insufficient evidence was presented to prove beyond a reasonable doubt that Mr. Murphy caused "serious bodily injury." As such, the case should be remanded for sentencing on any lesser included offense.

Respectfully Submitted,



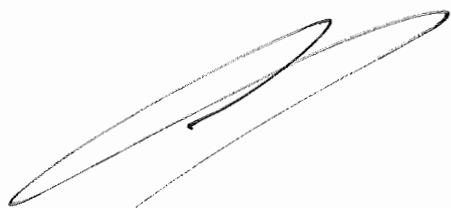
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on November 20, 2014, I caused to be served upon all parties, two conformed copies of the Brief of the Appellant by delivering said copies to:

Maeghan L. Maloney, District Attorney
95 State Street
Augusta, ME 04330

Dated: November 20, 2014

A handwritten signature in black ink, appearing to read 'Scott F. Hess', written over a horizontal line.

Scott F. Hess, Esq., Bar No. 4508